

HOWARD COUNTY ETHICS COMMISSION
3430 Courthouse Drive
Ellicott City, Maryland 21043

August 2, 2021

ADVISORY OPINION NO. 2021-02

The Howard County Ethics Commission (“Commission”) has received a request for an Advisory Opinion in which the Requestor has inquired about whether a potential conflict exists as a result of his position as a Board Member of the Hickory Ridge Community Association (the “Village Board”). The Commission finds that the Requestor’s service as a Board Member for the Village Board is not in conflict with his County employment as set forth herein.

I. BACKGROUND

The Requestor is employed by the Department of County Administration. The Department of County Administration fosters interdepartmental coordination and provides day-to-day administrative and technical support to ensure efficient operation of government and effective use of tax dollars in delivering services. The Requestor reports directly to the County Administrative Officer. As part of his official duties, the Requestor is responsible for issues related to the Office of Procurement and Contract Management, the Office of Human Rights, Central Fleet, the County mailroom and certain labor relations/human resources/personnel matters. Further, the Requestor helps facilitate the documentation for grants and other assistance provided by the County to local entities to ensure sufficiency. However, the Requestor does not participate in the Administration’s policy decisions as to which entities the County supports and does not have any budgetary duties.

According to its website, the Village Board members are elected by the community each April to advocate for residents, set policy, and uphold the covenants. The Village Board hires and supervises a village manager, approves the budget, and provides representation and liaison to the County, Columbia Association, and other community groups on behalf of the village/neighborhood. The Village Board meets twice a month regularly. Further, the Village Board, furnishes the Columbia Association with an accounting of funds spent and services provided to the residents of the village.

The Requestor appeared before the Commission on June 16, 2021 to make his request and answer any questions posed by the Commission. The Requestor noted that the in the past, there has been no intersection between his County employment and his role as a Board Member for the Village Board. When asked whether is role within the Village Board included being a direct “liaison to the County,” the Requestor explained that the village manager is hired to run the day-to-day operations and he has not and will serve as a liaison or representative of the Village Board to the County. He explained that the only real interaction between the Village Board and County employees is in connection with

presentations made by the County that are relevant to the village. For example, the police made a presentation regarding safety measures in the area and the office of transportation made a presentation regarding future transportation plans in the County. In the past, the Village Board participated before the County Planning Board and the County Zoning Board with respect to the redevelopment of the village center. Decisions from the County boards are pending a decision. The Requestor had no direct involvement before the County Boards.

Importantly, the County does not provide any funding to the Village Board. While the likelihood of any direct issues between the County and the Village Board arising are small, the Requestor volunteered that he would recuse himself from any matters directly between the Village Board and the Department of County Administration.

II. THE LAW

Sec. 22.201. - Statement of purpose and policy.

- (a) Howard County, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

Sec. 22.204. - Prohibited conduct and interests.

- (a) *Participation Prohibitions.*
 - (1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:
 - (i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.
 - (ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

- a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;
 - b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;
 - c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;
 - d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;
 - e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or
 - f. A business entity that:
 - 1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and
 - 2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.
- (b) *Employment and Financial Interest Restrictions.*
- (1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:
 - (i) Be employed by or have a financial interest in any entity:

- a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or
 - b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or
- (ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.
- (2) The prohibitions of paragraph (1) of this subsection do not apply to:
 - (i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
 - (ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
 - (iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or
 - (iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

...

(e) *Use of Prestige of Office.*

- (1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.
- (2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

III. ISSUE

Does the Requestor's participation on the Village Board present a conflict or an appearance of a conflict under the Ethics Law?

IV. DISCUSSION

A. Employment Prohibition:

The Ethics Code precludes simultaneous employment for an official with an entity that is subject to official authority of the covered employee or the authority of the Howard County agency, board or commission with which the Requestor is affiliated. To be consistent with prior Opinions of the Commission, the term "employment" is construed broadly to effectuate the purposes of the ethics law. (*See* Opinion Nos. 12-05, 07-04, 06-01, 01-00 and State Opinions 02-02, 87-01, 86-16).

On multiple occasions, this Commission has construed the employment provision broadly to include affiliation that does not result in monetary compensation. Volunteer service on management or operational boards of charitable organizations or professional associations has been analyzed as an employment interest. (*See* Opinions 06-01 and 01-00).

In this situation, the non-compensated service on the Village Board constitutes an employment relationship under our prior opinions. Based on the Requestor's description of the activities of the Village Board, overlap between his service on the Village Board and the Requestor's official duties is unlikely.

The fact that employment is non-compensated is immaterial, if the employee holds a "position of trust." The Commission looks to the substance of the employee's relationship with the outside entity rather than to the existence or amount of compensation. If the employee holds an office, directorship, or other position of trust with an entity subject to the authority of, or having contractual dealings with the employee's agency into which he would reasonably be expected to have a personal loyalty or commitment to the goals of that entity, then holding the position may be prohibited by the ethics law. Given the responsibilities of the Village Board, there is no question that a board member would hold a "position of trust." Members of the Village Board have responsibilities, including setting policies for the village and approving a budget.

Properly treated as employment in a position of trust, the prospective appointment

may be prohibited employment under the ethics law, if the Village Board is subject to the authority of the Department of County Administration, the County agency in which the Requestor is employed. This factor is not present in this inquiry. However, the absence of an overall bar does not end the inquiry.

C. Prohibited Participation

Section 22.204(a)(1) prohibits an official from participating officially, except in a non-ministerial or administrative way, in any matter in which would to his knowledge, have a direct financial impact as distinguished from the public generally, on himself or certain relatives or upon any business interest with which they are affiliated. “Matter” includes any decision, proceeding, application, submission, request for ruling or other determination, contract, claim, case or such particular matter that would involve some discrete and particularized impact on the employee or official, or which involves as a party an entity with which the official or employee or certain relatives are affiliated. (See Opinion Nos. 07-04, 06-01, 01-00, 96-03, 97-03, and 97-04.)

There is no question that in this situation a “matter” would include any participation between the Village Board and the Requestor’s appointing authority. As under the employment provision, the Commission has consistently construed the relationship with the business entity to include a non-compensated interest when the official holds a position of trust. The official participation of the Requestor would be as one of five members of the Village Board, having the ability to make managerial and policy decisions. Thus, participation would not be merely ministerial or administrative.

The Ethics Law is to be construed liberally to effectuate its purpose and policy, including “promot[ion] [of] the continued trust and confidence of the citizens of Howard County in the impartiality and independent judgment of public officials and employees” (See Section 22.201(a)). Thus, in focusing on the substance of the Requestor’s relationship with the Village Board, participation would only be barred under Section 22.204(a)(1) in those instances in which the Requestor, in his role within the Department of County Administration, had involvement or the necessity to collaborate or otherwise be involved with the Village Board.

D. Disclosure of Confidential Information

Section 22.204(e) prohibits officials from disclosing or using for their own gain or that of another, confidential information acquired in fulfillment of their public role. It will be necessary for the Requestor to avoid both affirmative and inadvertent disclosure of confidential information. Obviously, the Requestor would not be free to discuss matters

brought to his attention in his County employment, nor could he discuss confidential Village Board matters with his appointing authority or other County employees.

E. Appearance of Conflict/Inconsistent Employment

Under prior decisions of the Ethics Commission, we will consider an appearance of conflict a use of prestige of office prohibited under the Ethics Law. *See* Section 22.204(d). *See also* Op. Nos. 12-05; 07-05; 04-02. One type of appearance of conflict is deemed “inconsistent employment.” Inconsistent employment arises when a situation raises clear and serious conflict of interest issues, but in which specific authority or contractual affiliations set forth in 22.204(b) are not present. *See* Op. No. 07-05. Even if the connection between the Requestor’s County employment and his service on the Village Board is not deemed an “affiliation,” barring the official’s employment under 22.204(b)(1)(iii), it is, at a minimum, employment that has the potential for creating an appearance of a conflict.

The Ethics Commission typically looks to the following non-cumulative list of factors to determine whether a relationship is inconsistent employment:

- (1) How the employment was acquired;
- (2) Whether the employment was obtained on County time;
- (3) How the subject matter of the activity relates to County duties;
- (4) Whether outside activity derives from work performance or relationships that occur in connection with County responsibilities;
- (5) Whether some aspect of the County job would be impacted by the employment relationship; and
- (6) Whether the employer would feel pressured or perceived an advantage in County dealings because of its hiring of the County employee.

See Op. Nos. 12-05; 07-05.

In considering the factors, the Commission does not think any potential conflicts, or appearances of a conflict, rise to the level that would negate the Requestor’s ability to sit on the Village Board. In considering the first and second factors, the Requestor stated

that he is interested in community outreach and has a desire to serve his community. He was voted onto the Village Board by his neighborhood. There are no facts to suggest that his position on the Village Board arose in any way from his employment with the County. The first and second factors do not suggest an appearance of a conflict.

While, the Requestor's position with the County and the Village Board both may involve community relationships and it is impossible to say that there could never be any overlap between the Requestor's County position and his position on the Village Board, there is nothing to suggest an appearance of a conflict when analyzing factors three, four and five. The contacts and relationships in his County position will not necessarily be the same as those in his Village Board role. Arguably, his position with the Village Board has no impact on his County employment because the Requestor is not in a policy making, managerial or budgetary role with the County. The County is not involved in any funding decisions related to the Village Board. Moreover, should the need for direct interaction between the County and the Village Board, the village manager is the hired staff member to satisfy such role, not necessarily individual Board members. The facts do not suggest that the Requestor's County employment would be impacted in any way by the dual employment relationship. With the exceptions outlined herein, the Commission believes there is no issue with the Requestor's Village Board position.

With regard to the final factor, the Commission considered whether the Village Board has a perceived advantage in County dealings due to the Requestor's Board membership. There is a continuing risk that citizens could perceive an advantage due to the Requestor's position with the County. However, it is clear that the Requestor's role within the County has no influence on any County involvement with the Village Board. Further, from the testimony of the Requestor, and from review of the Village Board's website, there is no oversight or funding provided to the Village Board from the County. The Village Board has numerous Board members, all with ties to the community. This alone is not sufficient to rise to the level of a potential conflict.

V. CONCLUSION

The Commission appreciates the Requestor's dedication to the community. His willingness to serve on the Village Board is commendable. For the reasons stated, the Requestor's service on the Village Board is not in conflict with his County employment. However, in order to eliminate any potential for a conflict, the Requestor shall avoid participation in any matter directly between the Department of County Administration and the Village Board, should any arise. Further, should Requestor's position and/or roles within the County change, the Requestor should seek additional guidance from the Commission.

HOWARD COUNTY ETHICS COMMISSION

By



Kristen Bowen Perry, Executive Secretary
on behalf of the Howard County Ethics
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